

R E M A R K S

Careful review and examination of the subject application are noted and appreciated.

SUPPORT FOR THE CLAIM AMENDMENTS

Support for the claim amendments may be found in the specification, for example, on page 7 lines 2-15 and FIGS. 2 and 5, as originally filed, and claims 8, 12 and 17 as previously presented. Thus, no new matter has been added.

CLAIM REJECTIONS UNDER 35 U.S.C. §102

The rejection of claim 19 under 35 U.S.C. §102(b) as being anticipated by Brown '493 is respectfully traversed and should be withdrawn.

Brown concerns a monitoring system for remotely querying individuals (Title).

Claim 19 provides (A) displaying a plurality of icons of a plurality of questions, a plurality of answers and a plurality of follow-up actions. The Office Action cites FIG. 5 and the text in column 5 lines 52-62 of Brown, which read:

The script generator is designed to create a script program from the information entered in the script entry screen. The script program is executed by one or more of the remote apparatuses, as will be described in detail below. In the preferred embodiment, the script program includes display commands to display the queries and corresponding response choices entered in fields 94 and 96, respectively. The script program also includes input commands to receive responses to

the queries. The script program further includes a collect command to collect device measurements from the monitoring device specified in check boxes 98.

The cited material of Brown does not appear to explicitly mention icons. The above text does mention fields 94 and fields 96 in which queries and response choices are entered by the user. One of ordinary skill in the art would not appear to consider fields for entering data to be similar to icons. No evidence is on record that one of ordinary skill in the art would consider fields disclosed by Brown to be similar to icons. Therefore, the Office is again respectfully requested to either (i) clearly identify by figure reference number and/or the words in the above text allegedly similar to the claimed icons or (ii) withdraw the rejection.

Furthermore, claim 19 provides icons of follow-up actions. However, the cited material of Brown does not appear to explicitly mention follow-up actions. Therefore, the Office is respectfully requested to either (i) clearly identify by figure reference number and/or the words in the above text allegedly similar to the claimed follow-up actions or (ii) withdraw the rejection.

Claim 19 further provides (B) receiving a selection to each of a particular question of the questions, a particular answer of the answers and a particular follow-up action of the follow-up actions from a user. The Office Action cites FIG. 5 and the text

in column 5 lines 52-62 of Brown (reproduced above) in the rejection. However, the cited material of Brown does not appear to explicitly mention a user selecting icons. Therefore, the Office is respectfully requested to either (i) clearly identify by figure reference number and/or the words in the above text allegedly similar to the claimed selection or (ii) withdraw the rejection.

Claim 19 further provides (C) linking the particular icons. The Office Action cites FIG. 5 and the text in column 5 lines 52-62 of Brown. The cited material of Brown does not appear to explicitly mention linking icons. Therefore, the Office is respectfully requested to either (i) clearly identify by figure reference number and/or the words in the above text allegedly similar to the claimed icon linking or (ii) withdraw the rejection.

Furthermore, the Office Action asserts on page 9, "these icons are linked because once the user selects one of the icons the other icons become inactivated." In contrast, there is no evidence on record that Brown discloses such a limitation. Therefore, the Office is respectfully requested to either (i) clearly identify by figure reference number and/or the words in Brown that allegedly disclose both (a) the user selecting icons and (b) the other icons becoming inactive or (ii) withdraw the rejection. As such, *prima facie* anticipation has not been established for claim 19 and the rejection should be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

The rejection of claims 1-7, 9-16 and 18 under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Bondy '139, Papageorge '445 and Cairnes '404 has been obviated in part by appropriate amendment, is respectfully traversed in part, and should be withdrawn.

The rejection of claims 8 and 17 under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Bondy, Papageorge, Cairnes Mayer et al., U.S. Patent Pub. No. 2002/0010597 (hereafter Mayer) and Official Notice is respectfully traversed and should be withdrawn.

The rejection of claim 20 under 35 U.S.C. §103(a) as being unpatentable over Brown in view of Cairnes is respectfully traversed and should be withdrawn.

Brown concerns a monitoring system for remotely querying individuals (Title). Bondy concerns a method and apparatus for transforming a resource planning data structure into a scheduling data structure (Title). Mayer concerns systems and method for electronic health management (Title). Papageorge concerns a medical system for shared patient and physician decision making (Title). Cairnes concerns a method and apparatus for an integrated clinical tele-informatics system (Title). Official Notice is taken that medical claims comprise data relating to the physical condition of an individual.

The assertion in the Office Action, "having a means of automatically transforming data from one type of data structure into another type of data structure", does not explicitly establish an apparent reason why one of ordinary skill in the art would have combined the elements of Brown and Bondy in the manner claimed. *KSR Int'l Co. V Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007). Furthermore, no evidence is provided that Brown would have a reasonable expectation of success if the data was transformed as proposed. Therefore, *prima facie* obviousness has not been established.

The assertion in the Office Action, "having a means of helping patients make informed decisions", does not explicitly establish an apparent reason why one of ordinary skill in the art would have combined the elements of Brown, Bondy and Papageorge in the manner claimed. *KSR Int'l Co. V Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007). No explanation or reasoning is provided why the selected features of Papageorge would be considered obvious to import into the proposed combination of Brown and Bondy. The selection of Papageorge appears to be based solely on the claim language, which is improper hindsight. Therefore, *prima facie* obviousness has not been established.

The assertion in the Office Action, "having a means of customizing therapies for a particular patient according to their level of risk", does not explicitly establish an apparent reason

why one of ordinary skill in the art would have combined the elements of Cairnes with Brown, Bondy and Papageorge in the manner claimed. *KSR Int'l Co. V Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007). No explanation or reasoning is provided why the selected features of Cairnes would be considered obvious to import into the proposed combination of Brown, Bondy and Papageorge. The selection of Cairnes appears to be based solely on the claim language, which is improper hindsight. Therefore, *prima facie* obviousness has not been established.

Furthermore, Brown, Bondy, Papageorge and Cairnes appear to be non-analogous art based on their U.S. classifications. The Office Action provides no evidence that the references are analogous. In contrast, the references appear to have been chosen using the claims as templates, which is improper hindsight. Therefore, *prima facie* obviousness has not been established. As such, the claimed invention is fully patentable over the cited references and the rejections should be withdrawn.

Claim 1 provides a questionnaire generator for (i) generating a questionnaire comprising (a) one or more questions for determining an expression of risk for an individual and (b) a first number of answer options to each of the questions. In contrast, the language cited in the Office Action for the rejection of claim 1 is different than as claimed. For example, claim 1 does not provide "a questionnaire generator for (i) generating a

questionnaire comprising (a) one or more questions for determining at least one of a physical condition of said individual, a mental condition of said individual, and a behavior of said individual....” Therefore, *prima facie* obviousness has not been established for lack of evidence that the references teach or suggest all of the limitations as claimed. Claim 10 provides similar language.

Furthermore, the Office Action states that Brown does not teach (i)(b) a first number of answer options for an individual. The Office Action alleges that the text in column 8 lines 44-47, column 8 lines 58-63, column 8 lines 65-67 and column 9 lines 6-17 of Papageorge teach the claimed first number of answer options. The text of Papageorge column 8 line 44-column 9 line 17 reads:

g. Ask experts to reconcile practice views with published outcomes statistics to assess effect of practice patterns on treatment selection.

h. Conduct cost-effectiveness analysis to compare costs of each treatment to survival, continued morbidity, and mortality.

3. System Components

a. Use cost and outcome data, from the steps above, to indicate trade-offs for patients to consider in selecting, with their physicians, a suitable treatment.

b. Quantify these trade-offs using discount rates to score patients’ risk tolerance for each treatment strategy, showing the proximity of treatment preferences to what is most cost-effective.

c. Develop patient questionnaire to elicit treatment preferences and their bases, e.g., economic, family, lifestyle, and fear of surgical risk, pain, etc., which may change his/her risk tolerance level.

d. Develop physician questionnaire on patients’ clinical condition, severity level, planned treatment, and why others are not appropriate for a given patient.

e. Apply risk tolerance scale to the reasons for preferences to construct a risk tolerance profile of the patient.

f. Use cost-effectiveness analysis results to compute estimated direct medical cost of treatment and indirect costs resulting from inability to work or perform other tasks measurable by the concept of human capital.

g. Write conditional text for each possible physician and patient questionnaire response, explaining its positive or negative impact on outcome.

h. Format a report showing the responses and conditional text, the patient's risk tolerance profile, patient and physician treatment preferences, how they compare to that found to be most cost-effective, and the factors supporting their choice. Compute direct and indirect costs of each treatment option. Also, show the patient's severity level based on aggregate scores of the clinical indicators. Provide a one-page summary of the same information for use by insurers.

Nowhere in the above text, or in any other section of Papageorge does there appear to be a discussion regarding a first number of answer options for an individual, as presently claimed. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references teach or suggest all of the limitations as claimed. Claim 10 provides similar language.

Claim 1 further provides that the questionnaire generator (ii) associates each of the answer options with one of a second number of values representing a level of risk. In contrast, no arguments are presented in the Office Action alleging that any of Brown, Bondy, Papageorge and/or Cairnes teach or suggest associating each of the answer options with one of a second number of values representing a level of risk, as presently claimed. Therefore, *prima facie* obviousness has not been established for

lack of evidence that the references teach or suggest all of the limitations as claimed. Claim 10 provides similar language.

Claim 1 further provides that the second number (of values representing a level of risk) is greater than the first number (of answer options). The Office Action asserts that neither Brown or Bondy teach that the second number is greater than the first number. The Office Action also asserts that column 21 lines 12-27 of Cairnes mention the level of risk being greater than the number of answer options. The cited text of Cairnes reads:

In step 1208, PHA 120 retrieves the patient's 108 interview responses and medical device readings and stores the data in a database 130. The PHA decision support 126 and event manager 128 software, in step 1210, automatically processes the responses and device data, and in step 1212, classifies the pregnancy within a risk continuum based upon the available information and clinical management rules. In a preferred embodiment, the risk continuum is divided into at least three risk classifications of normal, medium or high risk. The software recommends for patient 108 a specific set of therapies based upon the patient's classification in the risk continuum. Generally, the number of recommended therapies is directly proportional to a patient's classification in the risk continuum. Thus, high risk patients receive significantly more therapies in contrast to low risk patients.

The above text does mention a risk continuum having at least three classifications of risk. However, the above text and the rest of Cairnes appears to be silent regarding the at least three risk levels being greater than a number of answer options. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references teach or suggest all of the limitations as claimed. Claim 10 provides similar language.

Claim 1 further provides a database in a storage medium, the database containing model information relating to (i) an aspect of care, (ii) the expression of risk and (iii) the level of risk. In contrast, the Office Action asserts that Brown, Bondy and Papageorge do not teach a database related to an aspect of care, an expression of risk and a level of risk. The Office Action alleges that an aspect of care, an expression of risk and a level of risk of a database is taught by column 21 lines 12-27 of Cairnes, which has already been reproduced above. The cited text does mention a risk continuum divided into classifications of normal, medium and high risk. However, the above text and the rest of Cairnes appears to be silent regarding both an aspect of care and an expression of risk. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references teach or suggest all of the limitations as claimed. Claim 10 provides similar language.

Claim 1 further provides a profile generator for (i) generating a profile for the individual based on one or more of the aspects of care, responses to the questions, the expression of risk and the level of risk associated with the individual. The Office Action asserts that Brown does not teach the claimed profile generator. The Office Action also asserts that Papageorge mentions a profile generator in column 8 lines 44-47, column 8 lined 58-63, column 8 lines 65-67 and column 9 lines 6-17, which have been reproduced above. The cited text does mention constructing a risk

tolerance profile. However, the cited text and the rest of Papageorge appears to be silent regarding the risk tolerance profile being based on one or more of the aspects of care, the responses to the questions, the expression of risk and the level of risk associated with the individual. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references teach or suggest all of the limitations as claimed. Claim 10 provides similar language.

Claim 1 further provides that the profile generator (ii) sending health related information to the individual based on the profile. The Office Action asserts that Brown does not teach the claimed profile generator. The Office Action further asserts that the claim limitation is mentioned in column 8 lines 44-47, column 8 lines 58-63, column 8 lines 65-67 and column 9 lines 6-17, which have been reproduced above. However, the cited text and the rest of Papageorge appear to be silent regarding sending health related information to an individual based on the profile. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references teach or suggest all of the limitations as claimed. Claim 10 provides similar language.

Claim 1 further provides (from former claim 8) that data relating to the physical condition of the individual comprises patient information from one or more medical claims received by the server from a medical claims paying organization associated with

the individual. The Office Action asserts that Brown does not teach electronic medical claims. The Office Action further asserts that paragraph 0046 of Mayer discusses medical claims received by a server from a medical claims paying organization. Since the Mayer reference was filed after the instant application, the parent paragraph in the earlier-filed Mayer provisional reads:

MyMSA is a tool to maintain the patient and family's medical saving account. It will make sure the right amount of money is deducted from each person's salary and will keep an ongoing balance. Payments for various health related services will be monitored and tallied. It will be able to communicate with various software applications already available such as Quicken and Microsoft Money or other financial management programs or institutions. It is also envisioned that such as tool could compile and tally the information and submit the reimbursement electronically to the Manage[r] of a Medical Savings Account. With its connection to *MyHealthBenefits* it can help decide what is the best use of health care dollars with respect to insurance reimbursement concerns.

The only electronic submission mentioned above appears to be a reimbursement send from the patient to a manager of a Medical Savings Account. Nowhere does the above text, or any other section of Mayer appear to discuss medical claims received by a server from a medical claims paying organization. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references teach or suggest all of the limitations as claimed. Claim 10 provides similar language by incorporating former claim 17.

Claims 3 and 12 provide a language of an individual. The Office Action cites the text in column 4 lines 59-60 and column 7 lines 24-31 of Brown, which read:

Each patient to be monitored is preferably associated with a respective one of the remote apparatuses.

...

The inclusion of a script interpreter in each remote apparatus is an extremely powerful feature of the monitoring system. Patient surveys, connection times, display prompts, selected monitoring devices, patient customization, and other operational details of each remote apparatus may be easily changed by making simple changes to the script program transmitted to the apparatus. Each script program includes a list of commands to be executed.

The above text does not appear to explicitly mention a language. Therefore, the Office is again respectfully requested to either (i) clearly identify the words in the above text allegedly similar to the claimed "language of an individual" or (ii) withdraw the rejections.

Claim 15 provides generating a report comprising the profile. In contrast, the Office Action does not provide any evidence or arguments that any of Brown, Bondy, Papageorge and/or Cairnes teach or suggest the claimed report. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references teach or suggest all of the limitations as claimed.

Claim 20 provides defining a position of the particular answer along a risk scale ranging from a low risk value to a high risk value. The Office Action cites column 21 lines 21-27 of

Cairnes in the rejection, which has been reproduced above. The cited text of Cairnes appears to mention a risk continuum having a range from normal to high. However, the cited text and the rest of Cairnes appears to be silent regarding defining a position of a particular answer along the risk continuum. Therefore, *prima facie* obviousness has not been established for lack of evidence that the references teach or suggest all of the limitations as claimed.

Claims 2-9, 11-18 and 20 depend from claims 1, 10 and 19, which are now believed to be allowable. As such, the dependent claims are fully patentable over the cited references and the rejections should be withdrawn.

New claim 21 and 22 depends from claim 19, which is now believed to be allowable. As such, the new claims are fully patentable over the cited references and should be allowed.

COMPLETENESS OF THE OFFICE ACTION

Aside from a notice of allowance, Applicant's representative respectfully requests any further action on the merits be presented as a non-final action. 37 CFR §1.104(b) states that the examiner's action will be complete as to all matters. MPEP §707.07(f) further states that even if there is a new ground of rejection, "The Examiner must, however, address any arguments presented by the applicant which are still relevant to any references being applied."

No arguments were presented that the claim 1 questionnaire generator (ii) associates each of the answer options with one of a second number of values representing a level of risk. No arguments were presented to claim 15 generating a report comprising the profile. Furthermore, the traversals in the previous amendment (Feb. 2007) to Brown, Bondy and Papageorge for claims 1, 10, 19, 3, 12, 8 and 17 were not addressed in the current Office Action even though the current Office Action repeated the same arguments using the same references. The traversals to the motivations to combine Bondy and Papageorge with Brown were not address in the current Office Action even though the current Office Action repeated the same motivation arguments. The traversal to the non-analogous nature of Brown, Bondy and Papageorge was not address even though the current Office Action continued to use these references in the same combinations. As such, the current Office Action is incomplete and either prosecution should be continued or a notice of allowance should be prepared.

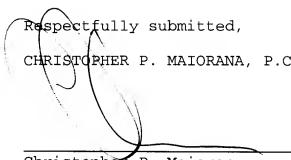
Accordingly, the present application is in condition for allowance. Early and favorable action by the Examiner is respectfully solicited.

The Examiner is respectfully invited to call the Applicant's representative at 586-498-0670 should it be deemed beneficial to further advance prosecution of the application.

If any additional fees are due, please charge Deposit
Account No. 50-0541.

Respectfully submitted,

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c/o Sandeep Jaggi
Health Hero Network

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